IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1398 of 1982

H.R. Khambhedia .. Plaintiff

versus

K.P. Patel & ors. .. Defendants

...

Mr.M.S. Rane i/b H.V. Gala for the plaintif

None for the defendants.

CORAM : D.G. KARNIK,J.

DATED : 23rd February 2007.

P.C.:

1. Heard larned counsel for the plaintiff. None present for the defendant.

2. By an order dated 9th October 2003, this Court (Coram R.M.S.Khandeparkar, J) ordered that the suit would proceed ex-parte without the written statement of the defendants. Thereafter by an order dated 16th December 2005, Advocate for defendant no.2

was discharged. The plaintiff thereafter filed the affidavit in lieu of evidence and produced the documents.

3. Th case of the plaintiff is that he is an architect. The defendant nos.1 to 11 are partners of a firm, M/s.Laxmi Industrial Estate. They entrusted the work of preparing the lay out of the proposed industrial estate to the plaintiff. A letter of authority was issued by the firm to the City Engineering, MCGB, recording appointment of the plaintiff and conferring the authority on the plaintiff. Copy of that letter was also given to the plaintiff which has been produced by him at Exhibit-B. The plaintiff thereafter prepared the lay out plan and submitted the same to the municipal corporation. The plans were approved by municipal corporation and thereafter the plaintiff requested the defendants to make the payment. However, as the defendants did not make the payment, the plaintiff by registered letter dated 15th May 1982 demanded the payment. As the defendants failed to make payment the plaintiff has filed this suit.

4. Following issues arise for my consideration:

Issue no.1 Whether the plaintiff proves that he was entrusted by the defendants the work of preparing the lay out for the proposed industrial estate?

Issue no.2 Whether the plaintiff proves that he demanded the payment for the work done by him and the defendant did not make the payment?

Issue no.3 Whether plaintiff is entitled to the interest prior to the suit?

Issue no.4 What order?

My answers are

Issue no.1 **Yes**

Issue no.2 **Yes**

Issue no.3 **Plaintiff is not entitled to the interest prior to the suit. However, plaintiff is entitled to the interest**

under section 34 of the Code of Civil Procedure.

Issue no.4 **As per the order below**

5. The plaintiff has filed on record his own affidavit in lieu of examination in chief and has produced documents. Evidence of the plaintiff has gone unchallenged. In the affidavit the plaintiff has stated that the defendants entrusted the work of preparing layout of the proposed industrial estate and he did the work. He has produced on record copy of the letter written by the defendants to the BMC about the plaintiff's appointment and office copies of the correspondence between the plaintiff and the B.M.C. The layout plan was prepared by the plaintiff and approved by the B.M.C. As the defendants did not pay the fees of the plaintiff, by his letter dated 15th May 1982 the plaintiff demanded payment. In the letter the plaintiff pointed out that total charges for his work was Rs.5,45,680/- and after giving credit for Rs.45,000/- paid by the defendants, an amount of Rs.5,00,680/- was due. Office copy of the letter of demand is produced on record at Exhibit-Y. Acknowledgement is also filed. The defendants received the said letter. They first sent interim

reply through their solicitors. The defendants thereafter send the final reply through their solicitors on 9th June 1982. Reply of the defendants is at Exhibit-AA.

6. In the reply, the defendants have admitted that the plaintiff had prepared building plans/project plans and submitted the same to the Bombay Municipal Corporation and Director of Industries. Thus, the defendants have admitted that they had appointed the plaintiff to carry out the work and that the plaintiff had carried out the work and submitted the plans. The defendants have neither filed the written statement making any positive case as to what was the work that the plaintiff was required to do and what work he allegedly did not carry out. The defendants have remained absent and have not even cross examined the plaintiff and the evidence of the plaintiff on oath has gone unchallenged. In my view therefore, the plaintiff has proved his case. The plaintiff has proved that he was entrusted the work of preparation of the lay out plans for the proposed industrial work. The plaintiff has also proved that he carried out the work and submitted the bills which the defendant did

not pay.

7. As regards the claim of interest, the plaintiff has not averred and proved that there was a contract to pay interest. Plaintiff had not demanded interest vide his letter of demand dated 15th May 1982. The plaintiff is therefore not entitled to the interest prior to the date of the suit. Interest from the date of the suit can however be awarded under section 34 of the Code of Civil Procedure. Hence, I pass the following order:

O R D E R

7. The suit of the plaintiff is decreed in part. The defendants shall pay to the plaintiff a sum of Rs.5,00,680/- and costs of the suit. The plaintiff shall be entitled to the interest at 9% p.a. from the date of the suit till payment.

D.G. KARNIK, J